IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 173 OF 2007
IN
SUIT NO. 3320 OF 1985.

M/s.Reliance Consultancy Services Pvt.Ltd. ... Plaintiff.

Versus.

M/s.Metropolitan Investments & others.... Defendants.

Shri Palan with Shri C.D.Abuwala i/by M/s.Dave & Co. for the Applicant/Plaintiff.

Shri B.G.Saraf for the Defendants Nos.1 to 3.

CORAM : ABHAY S.OKA, J.

DATED : 17th August, 2007.

P.C.:

1. Heard the learned Counsel appearing for the Plaintiff in support of the Chamber Summons and the learned Counsel appearing for the Defendants Nos.1 to 3. The Chamber Summons has been taken out for setting aside the abatement of the suit as against the 4th Defendant and for bringing the legal representatives of the deceased 4th Defendant on record. The affidavit of service tendered by the Counsel for the Plaintiff is taken on record and marked "X" for identification. The Chamber Summons is opposed by the learned Counsel appearing for the 1st to 3rd Defendants by submitting that there is gross unexplained delay of 438 days in taking out the Chamber Summons. He submitted that sufficient cause is not made out for condonation of delay and for setting aside the abatement.

2. In the affidavit in support of the Chamber Summons it is stated that the Plaintiff learnt about the death of the 4th Defendant in September 2005. On 1st October 2005 the Advocate for the Plaintiffs wrote a letter to one of the sons of the deceased Defendant No.4 calling upon him to furnish names and addresses of the legal representatives of the deceased 4th Defendant. The said letter was received by the son who demanded a copy of the order passed by the Court. There was further correspondence between him and the Advocate for the Plaintiff. My attention has been invited to various averments made in the affidavit in support of the Chamber Summons.

3. For the reasons set out in the said affidavit, the delay deserves to be condoned and the abatement deserves to be set aside. Accordingly Chamber Summons is made absolute and the delay in taking out the Chamber Summons is condoned. The abatement of the suit as against the 4th Defendant is set aside and the Plaintiffs are permitted to bring the legal representatives of the deceased Defendant No.4 on record as prayed in prayer clause (c). Amendment to be carried out within a period of four weeks. There will be no order as to costs.

Judge.